



Comptroller General
of the United States

Washington, D.C. 20548

100150

Decision

Matter of: Hugo Heyn Company

File: B-255329

Date: February 15, 1994

Michael F. Kivett, Esq., and Lisa M. Faisant, Esq., for the protester.

William E. Thomas, Jr., Assistant General Counsel,
Department of Veterans Affairs, for the agency.

Sheila K. Ratzenberger, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Where two purchase orders for a centralized dictation system and the related equipment are against two mandatory General Services Administration Federal Supply Schedule contracts, the agency is not required to advertise or seek further competition for the purchases.

2. Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the new allegations must independently satisfy the timeliness requirements in the General Accounting Office Bid Protest Regulations.

DECISION

Hugo Heyn Company, an authorized dealer of Lanier products, protests the issuance of purchase orders Nos. 636-A37997 and 636-A37999 against two mandatory General Services Administration (GSA) Federal Supply Schedule (FSS) contracts by the Department of Veterans Affairs (VA) Medical Center, Omaha, for a centralized dictation system and related equipment. In its initial protest, Hugo Heyn claimed that VA improperly failed to advertise and seek competition for the purchases. In its comments on the agency report, Hugo Heyn for the first time argued that the VA exceeded the maximum order limitation of \$100,000 by issuing two purchase orders against two different multiple award schedules, and that VA failed to order the lowest priced item from the FSS contract.

We deny in part and dismiss in part.

The dictation systems and related equipment capable of meeting the VA's technical requirements for the medical

facility were available on two multiple award FSS schedules for which the VA was a mandatory user. The agency determined that there were eleven performance criteria required to meet the current and future needs of the medical center. Dictaphone Corp. and Lanier, through Hugo Heyn Company, were among those companies listed on the schedules who provided proposals and participated in discussions with the agency about the medical facility's needs and criteria. After surveying offerings, including Hugo Heyn's, on the FSS mandatory schedules, the VA determined that the Dictaphone contract met VA's needs and issued purchase order Nos. 635-A37997 and 636-A37999 on September 28, 1993. The VA determined that it did not need to advertise the procurement or seek further competition since it was precluded from doing so by virtue of the mandatory FSS. We agree.

The Competition in Contracting Act specifically provides that GSA's multiple awards schedule program, of which FSS is a part, is considered to be a competitive procedure, and purchasing from the schedule requires no further competition. 41 U.S.C. § 259(3) (1988); Federal Acquisition Regulation (FAR) § 6.102(d)(3) (1991). See generally Mohawk Data Science Corporation, 69 Comp. Gen. 13 (1989). Accordingly, publishing a notice of the order in the Commerce Business Daily is not required for purchases from the mandatory schedules. Precise Copier Services, B-232660, Jan. 10, 1989, 89-1 CPD 25. Since in this case the purchase orders were against two mandatory FSS contracts, no further competition was required.

Further, the determination of the agency's minimum needs and which products on the FSS meet those needs is properly the agency's responsibility. Herman Miller, Inc., B-230627, June 9, 1988, 88-1 CPD 549. Vendors responding to an agency's request for quotations for equipment on an FSS do not submit offers that define exactly what the vendor would supply at what price; that already is defined by their FSS contracts. Since such requests are merely intended to identify suitable equipment already listed on the FSS, evaluation of the equipment is not limited to consideration of the requirements mentioned in a request for quotations. Datum Filing Systems, Inc., B-230886.2, July 28, 1988, 88-2 CPD 97.

In view of the discretion afforded the agency in determining whether a product meets its needs, we find the VA's evaluation unobjectionable. The agency reports that it evaluated both the Dictaphone and Lanier proposals against the same identified eleven criteria, and visited an existing installation site for each company's model. Based on this analysis, the agency determined that only Dictaphone met all the minimum requirements. Since the protester has presented

no evidence which would question the reasonableness of this determination, we have no basis to overturn it.

In its comments on the agency report, the protester for the first time advanced two other challenges to the purchase: that the VA exceeded the maximum order limitation by issuing two purchase orders against two different FSS schedules, and that the VA failed to order the lowest priced item from the FSS contract. The agency contends that these protest grounds should be dismissed because they are untimely. We agree.

Our Bid Protest Regulations provide that protests not based upon alleged solicitation improprieties must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. See 4 C.F.R. § 21.2(a)(2) (1993). It is the protester's duty to set forth in its initial protest a detailed statement of all legal and factual grounds of protest, since each basis of the protest must independently satisfy the timeliness requirements set forth in the regulations. See 4 C.F.R. § 21.1(c)(4); Bendix Oceanics, Inc., B-247225.6, June 29, 1993, 93-2 CPD 25. Accordingly, we have held that a protester may not raise new grounds of protest in its comments to an agency report that could have been raised in the initial protest filed within the time limit. Hampton Roads Leasing, Inc. - Reconsideration, B-244887.2, Apr. 1, 1992, 92-1 CPD 330.

In this case, the orders to purchase the dictation system and equipment from Dictaphone were dated September 28, 1993. The initial protest claiming that VA improperly failed to advertise and seek competition for the purchase was received in this Office on October 8, 1993. The protest package included copies of both purchase orders, which clearly show that the authority for the purchase was the FSS and give the price totals and breakdowns for the dictation system and equipment purchased. The protester's response to the agency report raising the two additional protest grounds was received December 6, 1993, well past the regulatory time requirement. The contents of the initial protest package, coupled with the fact that the protester had been consulted about the purchase before the purchase orders were issued, indicates that the protester had notice of these additional grounds at the time the initial protest was filed and they should have been raised at that point.

The protest is denied in part and dismissed in part.

Seymour E. Evans
for Robert P. Murphy
Acting General Counsel